

RECEIVED
CENTRAL FAX CENTER

JUN 01 2009

SP 1665.1US

CERTIFICATE OF TRANSMISSION UNDER 37 CFR §1.8

I, R.C. Brarona, hereby certify that this paper, totaling 3 pages, is being transmitted by FAXSIMILE as of the date below to the United States Patent and Trademark Office for facsimile telephone number: (571)273-8300.

June 1-2009

Date



Signed

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.:	10/682,223	Examiner:	Chu
Filing Date:	October 9, 2003	Art Unit:	1795
Applicant:	Schubert et al.	Attorney Dkt No.:	SP-1665.1US
Title:	Non-aqueous Cell with Improved Thermoplastic Sealing Member		

REPLY TO EXAMINER'S ANSWER

Mail Stop APPEAL BRIEF-PATENTS
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

Dear Sir:

This is a Reply to the Examiner's Answer mailed on March 30, 2009. It is being filed under 37 CFR § 41.41. Although it is the Applicants belief that no fee is due for this filing, you are hereby authorized to charge any fees deemed proper and necessary for entry of this Reply in view of applicable USPTO regulations, to Deposit Account No. 05-1325. Also, please note that, because the period for the reply ended on Saturday, May 30, 2009, this Reply is timely pursuant to 37 CFR §§ 1.7, 1.8 and 41.1(a) because it was transmitted via facsimile on Monday, June 1, 2009.

This brief contains these items under the following headings in the order set forth below:

Table of Contents**Table of Authorities****Statement of Additional Facts****Argument**

Applicant: Schubert et al.
Application No.: 10/682,223
Reply to Examiner's Answer
Page 2

Table of Contents

Table of Authorities *none cited*
Statement of Additional Facts *none cited*
Argument *pages 2-3*

Table of Authorities

None cited

Statement of Additional Facts

None cited

Argument

On page 12, lines 18-19 of the Examiner's Answer, the examiner states "*the Doose reference does not disclose an electrochemical cell.*" The applicants wholeheartedly agree. Aside from a coincidental observation that a single material property provided in Doose matches a broad range in Malay, the Examiner has not provided **any** explanation as to why one of ordinary skill in the battery arts would look to the unrelated field of rider rings in pumps and support pads for buildings, both being uses contemplated by Doose, for problems relating to the electrochemical cells contemplated by Malay and Zupancic. Indeed, the teachings of Malay suggest that the shape of the seal—not the composition of the polymer used to make that seal—improves the seal performance (see col. 7, lines 48-59 and the claims of Malay). Therefore, the combination of Malay and Doose is inapposite, as is the combination of Zupancic and Doose (the latter being a point on which the Examiner tacitly agrees, see page 14, lines 15-18 of the Examiner's Answer).

On page 11, lines 4-9 of the Examiner's Answer, the examiner states "*When using KSR Int'l Co v. Telesflex Inc. in Page 5, line 15-22, [sic] the rejection is for claim 18. Claim 18 specifically recites chlorotrifluoroethylene, fluorinated-ethylene polypropylene, polyvinyls. The Zupancic [sic] discloses PTFE as the sealing member, and Malay et al. relates PTFE with*

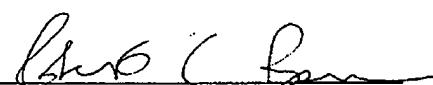
Applicant: Schubert et al.
Application No.: 10/682,223
Reply to Examiner's Answer
Page 3

chlorotrifluoroethylene, fluorinated-ethylene polypropylene, polyvinyls for resins used as thermoplastic equivalents for the sealing member." The Applicants believe the Examiner's citation of page 5, lines 15-22 refers to the Final Office Action. In response, it is not apparent to the Applicants that the Examiner's statements at page 5, lines 15-22 in the Final Office action were limited only to claim 18. When considered in context, the first sentence of the paragraph containing the citation actually begins with the phrase "Regarding claims 1-5 and 18, 20, 21..." and the paragraph immediately preceding the cited passage is a rejection of claims 1-15, 18 and 20-22. Absent an explicit explanation, it is difficult for the Applicants to understand why one of ordinary skill in the art would combine the teachings from an insulating sealing gasket, such as the one disclosed in Malay, with a sealant for a rupturing vent, as disclosed in Zupancic. In the Applicants' view, this combination may actually defy common sense for some or all of the claims to which the combination applies. As such, the Applicants submit that the rationale for combining Malay and Zupancic is at best lacking, and upon further explanation, may be improper.

For the reasons given in this reply brief and in the appeal brief, reversal of the Examiner's rejection is requested.

Respectfully submitted,

Date: June 1 - 2009


Robert C. Baraona
Registration No. 45,426
Eveready Battery Company, Inc.
25225 Detroit Road
P.O. Box 450777
Westlake, OH 44145
(440) 835-7632